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November 17, 2000

JOHN H. BROADLEY

Honorable Vernon Williams  
Secretary  
Surface Transportation Board  
1925 K Street NW  
Washington, D.C. 20423-0001



Re: Ex Parte 582 (Sub-No.1), Major Rail Consolidation Procedures

Dear Mr. Williams:

Enclosed for filing in the captioned proceeding is an original and 25 copies of the COMMENTS OF THE PORT OF SEATTLE ON THE SURFACE TRANSPORTATION BOARD'S PROPOSED MERGER GUIDELINE REVISION. Also enclosed is a 3.5" disk containing the text of the filing in WordPerfect 9 format.

I have also enclosed an extra copy of comments which I ask that you date stamp and return with our messenger.

Yours very truly,

John Broadley

Enclosures

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BEFORE THE  
SURFACE TRANSPORTATION BOARD  
Washington, D.C.



\_\_\_\_\_)  
MAJOR RAIL CONSOLIDATION )  
PROCEDURES )  
\_\_\_\_\_)

Ex Parte No. 582 (Sub-No. 1)

COMMENTS OF THE PORT OF SEATTLE ON  
THE SURFACE TRANSPORTATION BOARD'S  
PROPOSED MERGER GUIDELINE REVISION

The Board served an advance notice of proposed rule making ("ANPRM") in this docket in March 2000 calling for comments on whether the Board should revise its merger guidelines applicable to major rail consolidations. The Board received comments from a wide range of interests including shippers, rail carriers, ports, government agencies, and labor organizations that expressed a wide variety of views on the shape of the Board's future merger guidelines. The Port of Seattle ("Port") expresses its appreciation to the Board for undertaking this process, for obtaining and considering the views of so many diverse constituencies, and for proposing revisions to its guidelines that accommodate many of the concerns expressed, including those of the Port.

The Board's Proposal Addresses The Port's Primary Concerns

The Board's proposed merger guidelines deal with two issues that formed the core of the Port's concerns expressed in its filings in response to the ANPRM -- enhancing the post-merger competitive structure of the rail industry and ensuring that the merger implementation process is not disruptive.

The proposed guidelines state that future Class I mergers between financially healthy railroads must propose *enhanced* rail competition, failing which the Board will use its conditioning powers to require that enhanced competition results from the transaction. The Port endorses the reasonable implementation of the Board's proposal. Competitive benefits, including the merging railroads' increased ability to compete with intermodal and motor carriers and the response of those carriers should be considered in determining whether a merger is in the public interest. The Port does not believe, however, that the Board should require competitive enhancements beyond those needed to offset any harmful effects of the merger.

The proposed guidelines make clear that the Board will look at so-called "downstream effects" of future mergers. This new approach is consistent with the Port's position that the Board should ensure that the rail structure resulting from a final round of industry mergers is one that is acceptable from a competitive standpoint. As noted in the Port's comments, under present law it may be difficult to remedy an anticompetitive situation if one develops, particularly if it develops after the mandatory oversight period.

The proposed guidelines require that merging carriers take a number of additional steps to ensure that the merger is smoothly implemented without the disruptive effects on shippers and ports caused by the Union Pacific - Southern Pacific merger and the CSX/NS acquisition of Conrail. The Port endorses this new focus on ensuring smooth implementation and on avoiding the disruption that has accompanied some recent mergers.

The proposed guidelines take a realistic and reasonable approach to transnational issues by requiring applicant carriers to address a number of unique issues that may arise when a merger has significant transnational elements. The Port suggests that where a merger has significant

transnational elements, however, the Board require applicants to address whether (Proposed Section 1180.1(k)):

commercial decisions made by foreign railroads could be based on national or provincial rather than broader economic considerations and be detrimental to the interest of the United States rail network **or United States ports**, and applicants . . . (proposed new language in bold)

This would conform the Board's approach with respect to transnational mergers to the approach taken in proposed section 1180.7(b) requiring that full system impact analyses look at the effects of the transaction on all network links, including ports, an approach the Port fully endorses. *See* proposed 1180.7(b) and 1180.7(b)(6).

#### The Port's Reservations Regarding the Proposed Guidelines

The Port has two reservations regarding the proposed merger guidelines. First, the Port is concerned that the proposed guidelines may not give sufficient weight to economic efficiency gains that can result from railroad consolidations. Because of its location, the Port's competitive position is completely dependent on efficient and responsive rail service. Past experience has demonstrated that because railroads are subject to competition, a substantial part of economic efficiency gains from mergers will devolve to shippers and ports. While the Port recognizes that future mergers may present more difficult challenges to the Board in preserving and enhancing competition, difficulty in meeting those challenges should not be used as a sole reason for denying mergers that will result in substantial economic efficiency gains for the merging carriers.

Second, the Port believes that a timely merger implementation process is beneficial for all concerned. The proposed guidelines envision a process that can take more than a year. The

Port urges the Board to take a closer look at streamlining timelines to keep the process to a manageable and efficient length.

### CONCLUSION

For the foregoing reasons, the Port endorses the Board's proposed merger guidelines, subject to the reservations expressed above.

Respectfully submitted,

THE PORT OF SEATTLE

By: John Broadley  
One of its attorneys

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Dated: November 17, 2000

## CERTIFICATE OF SERVICE

I hereby certify that on this 17<sup>th</sup> day of November 2000 I caused copies of the foregoing COMMENTS OF THE PORT OF SEATTLE ON THE SURFACE TRANSPORTATION BOARD'S PROPOSED MERGER GUIDELINE REVISION to be served on counsel for all parties of record on the Board's service list, as amended to the date of filing, by depositing copies thereof in the United States mails, postage prepaid, addressed to counsel for such parties.

John Bradley

Dated: November 17, 2000